

1 you have copies of his testimony?

2 MR. PHILLIPS: I do, Your Honor.

3 JUDGE SIPPEL: Be sure you have a
4 copy for Ms. Bergold. Two copies -- you've
5 got yours? Two copies for -- the Reporter's
6 copies you can give to Ms. Gosse. And I just
7 want one copy if you have one.

8 MR. PHILLIPS: Yes, Your Honor.

9 JUDGE SIPPEL: Okay. I know I
10 have a set someplace, but this is easier.
11 And, of course, the witness should have up
12 there --

13 MR. PHILLIPS: I don't want him to
14 put it before --

15 JUDGE SIPPEL: Fine. Mr.
16 Phillips, are you ready? I don't want to --

17 MR. PHILLIPS: No, Your Honor, I'm
18 fine. If Your Honor is ready, I'm fine.

19 JUDGE SIPPEL: I'm all set. I'm
20 all set to go. Thank you.

21 Okay. Sir, would you please raise
22 your right hand?

1 WHEREUPON,

2 KEN SOLOMON

3 was called as a witness by Counsel for The
4 Tennis Channel, Inc., and, having been first
5 duly sworn, assumed the witness stand, was
6 examined and testified as follows:

7 JUDGE SIPPEL: Please be seated.
8 State your name and your position.

9 THE WITNESS: My name is Ken
10 Solomon. I am the Chairman and CEO of Tennis
11 Channel.

12 JUDGE SIPPEL: Mr. Phillips?

13 DIRECT EXAMINATION

14 BY MR. PHILLIPS:

15 Q Good afternoon, Mr. Solomon. How
16 are you doing?

17 A Fine, thank you.

18 Q Could you please just repeat for
19 us, what is your occupation?

20 A I am the Chairman and CEO of
21 Tennis Channel.

22 Q And what is The Tennis Channel,

1 Mr. Solomon?

2 A Tennis Channel is an independently
3 owned, 24-hour, seven-day-a-week cable network
4 that televises substantively live tennis
5 events from all over the world, year round,
6 with the biggest stars both in front of and
7 behind the camera.

8 Q Now, you say that you are the
9 Chairman and CEO. Can you describe for me
10 what you do as the Chairman and CEO of Tennis
11 Channel?

12 A Substantively, all of the
13 companies operations report to me. I'm
14 responsible for building the brand, for the
15 advertising, for the distribution, and for the
16 management of the company, as well as the
17 other duties associated with being Chairman.

18 Q By the way, as a housekeeping
19 matter, Mr. Solomon, in front of you you have
20 what has been marked as Tennis Channel Exhibit
21 14, which says it is the direct testimony of
22 Ken Solomon. Do you see that?

1 (Whereupon, the above-referred to
2 document was marked as Tennis
3 Channel Exhibit No. 14 for
4 identification.)

5 A I do.

6 Q And is the testimony that you have
7 provided in this matter, sir?

8 A Yes, it is.

9 Q And do you swear that this
10 testimony is true?

11 A I do.

12 MR. PHILLIPS: Your Honor, I would
13 like to admit Exhibit 14, Mr. Solomon's
14 testimony, into evidence.

15 JUDGE SIPPEL: Objection?

16 MR. CARROLL: Your Honor, there is
17 no objection. There appears to be some
18 hearsay interlaced in it in places, but that
19 will be subject to examination. So no
20 objection to admitting it.

21 JUDGE SIPPEL: Okay. Thank you.

22 The document is marked Exhibit 14 and received

1 in evidence.

2 (Whereupon, the above-referred to
3 document, previously marked as
4 Tennis Channel Exhibit No. 14 for
5 identification, was received into
6 evidence.)

7 BY MR. PHILLIPS:

8 Q Mr. Solomon, to go back to The
9 Tennis Channel, now knowing what kind of
10 network it is, could you describe for me what
11 types of events you cover on The Tennis
12 Channel?

13 A Well, tennis is a sport that
14 happens all around the world, and we cover the
15 events that happen both live and on a delay
16 basis all over the world. We have
17 substantively all of the top hundred
18 tournaments in the world. Those include the
19 four majors, as they are called. Each one of
20 those lasts about two weeks long, and we cover
21 each of those.

22 And we use the biggest

1 personalities on the air, and we also -- we do
2 it in high definition, which is very important
3 in our business. And we also do original
4 programming, so we do live-style programming,
5 we do a significant amount of it, both live
6 style and shows about the players.

7 Q You mentioned the four majors.
8 Can you name those for me?

9 A Those are Wimbledon, the French
10 Open, the Australian Open, and the U.S. Open.

11 Q And you have some rights to each
12 of those, correct?

13 A We do.

14 Q Have you ever won or been
15 nominated for awards for your program?

16 A We this past year were nominated
17 for an Emmy for our Wimbledon coverage, which
18 was great, by the Academy of Television Arts
19 and Sciences. And we have received a number
20 of other accolades from the press and from
21 viewers in various places.

22 Q In addition to the tennis coverage

1 that you make of tournaments, what else --
2 what other kind of programming do you offer?

3 A We do a lot of worldwide field-
4 based coverage. So we will do -- which are
5 series and specials. We'll do documentaries
6 about famous players. We will also do shows
7 about the things that subscribers tend to feel
8 are most important, because a lot of our
9 viewers also play the game. So we will do
10 clinic shows like Tennis Channel Academy.

11 We will do shows on health and
12 fitness, which we think are very important,
13 like Fit to Hit and others, short form, long
14 form, and documentaries, tennis travel. We
15 will also do quite a lot of -- tennis players
16 seem to be very charitably oriented, so we
17 will do charity-based tennis events like the
18 Hit for Haiti, which we did recently, or one
19 for the victims of the Japanese tsunami that
20 we did recently with the top stars in the
21 world.

22 Q What would you describe as the

1 primary focus, though, of the coverage that
2 you have, the types of television coverage
3 that you have?

4 A The biggest thing is clearly the
5 events, and, you know, having substantively
6 all of them in a stream throughout the year.
7 There is, you know, the men's tour, the
8 women's tour. There is the Davis Cup, which
9 is obviously international competition, which
10 we currently own as well as the slams and the
11 other -- those are probably considered the
12 most important and the most valuable.

13 Q How broadly is Tennis Channel
14 distributed?

15 A We have about 130 distribution
16 partners. And if you add all of the
17 subscribers up that those partners comprise,
18 it is about 26 million homes that subscribe to
19 Tennis Channel today.

20 Q Now, is that in any particular
21 part of the country?

22 A Well, we have both individual

1 markets where we are distributed, but it is
2 substantively across the entire country for
3 the most part, because we do have national
4 distribution partners with both satellite
5 providers, with DirecTV, Dish Network, and
6 others. And they generally -- as well as Cox
7 and other on-the-ground cable distributors, as
8 well as the telephony partners like AT&T and
9 Verizon.

10 And what they tend to do is clear
11 us, if you will, in packages, in groups of
12 networks that are available, or tiers as they
13 are sometimes called in our business.

14 Q And what kind of tier do you find
15 yourself on with most of these distributors?

16 A Well, today about two-thirds of
17 our distribution is comprised of tiers that
18 would be considered general interest tiers.
19 They would have a range of both sports-based
20 programming and other types of networks,
21 general and information types of networks. So
22 about two-thirds of them. A lot of people

1 consider that a basic level of service, either
2 basic or what is sometimes called expanded
3 basic in our business today.

4 Q I should have backed up to catch
5 this before. For Your Honor in particular,
6 Mr. Solomon, could you explain to me a little
7 bit of your history and employment before you
8 came to The Tennis Channel?

9 A Sure. Immediately prior to Tennis
10 Channel, I worked for the E.W. Scripps
11 Corporation and helped them -- as President
12 helped them launch a new network called Fine
13 Living. Scripps is a company that has Home
14 and Garden Television and the Food Network.

15 Prior to that, I was a President
16 of Universal Studios Television. There I was
17 more responsible for the prime-time network
18 production and marketing of their shows, shows
19 like Law and Order and prime-time sitcoms and
20 dramas, as well as in the syndication and
21 cable universe.

22 Before that, I was at a company

1 called DreamWorks, which was a new studio that
2 was founded by a group of executives from the
3 entertainment business, Jeffrey Katzenberg,
4 Steven Spielberg, and David Geffen. I worked
5 for them and helped build in the formative
6 stages their worldwide television efforts.
7 And before that I was at Fox, at Newscorp,
8 where -- at the division called the Fox
9 Network, where I was head of distribution
10 there as well as at Disney prior to that.

11 Q Thank you. Now, to go back to
12 your distributors for a second, you mentioned
13 to me that you -- you know, you have about 130
14 companies that distribute your network. How
15 would you describe your relationships with
16 your distributors?

17 A Well, they are great. They are
18 partnerly as a rule. You know, we worked
19 together to build -- to build their business
20 and to build our business jointly and
21 together. And so we think they are very
22 strong, and we interface with them on a number

1 of levels on a regular basis.

2 I think a lot of the headlines are
3 often grabbed by the negotiations for
4 contracts, because those can be certainly very
5 heated at times. But, really, the
6 relationship begins after the contract is
7 started, and it's a long process of building
8 business together.

9 So we think that we are aligned,
10 as a result, with our partners, and we have
11 great relationships, which is why the business
12 has done well.

13 Q Comcast is one of your
14 distributors, is it not?

15 A They are.

16 Q What is your attitude about
17 Comcast, Mr. Solomon?

18 A Comcast is an impressive company.
19 I think what they have done is remarkable, and
20 what they have accomplished. I have said it
21 many times to executives at the company. I
22 have kind of grown up in this business. It's

1 a small business, and I know a lot of the
2 folks at Comcast. I consider a lot of them
3 friends. Many have been colleagues in the
4 past. I think their achievements are
5 terrific.

6 Q Well, now, Mr. Solomon, I have to
7 ask the question: why did you bring this
8 lawsuit?

9 A Well, certainly, the lawsuit has
10 nothing to do with how we feel about the
11 individuals of the company. Overall, we
12 brought the lawsuit because Comcast carries us
13 on a very narrowly distributed tier of
14 service. And it is a tier of service that
15 requires consumers and fans to pay extra to
16 get it.

17 And so for us that is a
18 significant impediment, not being able to get
19 to the majority of the one in four homes that
20 Comcast essentially controls access to in this
21 country. So that is sort of problem number
22 one, is we are not able to get the content and

1 the result of our efforts to the consumers.

2 The second issue is that Comcast
3 is not only a distributor, but they are also
4 a direct competitor, in that they own some or
5 all of -- a significant portion of the
6 networks that we consider direct competitors.

7 And those networks don't have the
8 additional surcharge that we -- the customers
9 don't have to pay the additional surcharge --
10 subscribers -- that they do for Tennis
11 Channel, and that they are much more widely
12 distributed by many, many millions of homes,
13 and that puts us at a competitive
14 disadvantage.

15 Q When --

16 A So -- I'm sorry, I didn't really
17 complete the thought. And so what we are
18 really here -- and the reason why we brought
19 suit is simply to get equal treatment for our
20 channel, for what theirs are getting.

21 And substantively, from a content
22 standpoint, we have rights that are

1 equivalent, if not more extensive, in our
2 sport. They are certainly as high, if not a
3 higher, caliber. It's hard to argue that
4 they're not of a higher caliber. Our ratings
5 are very often -- certainly significantly
6 similar, if not superior. We like to think
7 they are superior. And we do it all for less
8 money.

9 Q What networks in particular are
10 you referring to, sir?

11 A Well, certainly Golf Channel and
12 Versus are two that are very similar to Tennis
13 Channel in a number of ways. They are
14 directly in our competitive set in a -- in
15 virtually every way that matters in our
16 business. Obviously, the Football Network is
17 one. They don't own that one. But the Major
18 League Baseball Network is a big one, and the
19 NHL Network, the Hockey Network, is one, and
20 the NBA Network, the basketball network.

21 The good news is we found out that
22 the head of the basketball network likes

1 Tennis Channel, so at least we have one happy
2 consumer out there.

3 Q How do you feel about sports
4 tiers, Mr. Solomon?

5 A Well, sports tiers, as a rule,
6 haven't been very successful. And, you know,
7 I think there is nobody that has sort of
8 echoed that sentiment more loudly than
9 Comcast. They seem to agree with us
10 vehemently in that regard. Comcast owns a
11 piece or all of a number of sports networks,
12 yet on their very own distribution system they
13 don't have one of them there.

14 So for -- we wonder why, if they
15 think it would be a good idea, they don't put
16 their sports networks there, and they haven't.
17 That is the inward manifestation of how -- and
18 they seem to agree with us. On the outward
19 manifestation, it seems to be equally clear.

20 Comcast, as a program distributor,
21 their distribution executives are out there
22 telling all of their distributors outside of

1 themselves that they are fighting very hard to
2 not ever be on a sports tier only level of
3 distribution, as do we. So we seem to be in
4 agreement on that.

5 Q Does that mean, Mr. Solomon, that
6 you are against all sports tiers?

7 A Well, no. Our business is
8 interesting, because the nomenclature can be
9 a little bit fuzzy sometimes. Sports tier, as
10 a word, is fine. There are distributors who
11 have sports tiers that are much broader than
12 Comcast's very narrow definition, which is
13 about a 10 percent penetration level, one in
14 10 viewers or subscribers if you will.

15 Cox comes to example. Cox is a
16 distribution company based in Atlanta. They
17 are a very good partner of ours and have been
18 for a long time. They are a cable
19 distributor, an MSO. And they have what they
20 call a sports and information tier. The
21 sports and information tier has a mixture of
22 networks like Tennis Channel, Golf Channel,

1 Versus, the Hockey Channel, but they also have
2 networks like Bloomberg News on it.

3 And so that sports tier, which is,
4 again, a sports and information tier, is in
5 of their
6 homes. So that seems pretty good. That is
7 okay. We like that.

8 Q Well, now but you're on the sports
9 -- narrow sports tier with some other
10 distributors, sir, are you not?

11 A We are. It is interesting,
12 because many of the networks that are allowed
13 by virtue of their license with us to -- and
14 may have started with Tennis Channel on a
15 sports tier, have seen the evolution of our
16 network. And since they have seen the growth
17 in terms of the content, the value proposition
18 that we have offered through our investment,
19 have what they have called melted us down or
20 migrated us to broader distribution.

21 So we may remain on a sports tier
22 or not, but they will then expand us to a more

1 broad tier of service. And that has happened
2 with quite a significant amount of them.

3 Still, there are others who we're
4 in conversation with, like the Time Warner,
5 for example. Time Warner was a deal that was
6 done back I believe in pre-2003 when we
7 launched, a long time ago by today's
8 standards, and certainly in the entertainment
9 business standard, and the cable business
10 standard, nearing a decade probably since that
11 deal was signed.

12 We have had -- Time Warner has
13 told us that they recognize the evolution and
14 value that we have brought to this channel
15 since this -- they did the deal with us. I
16 think Tennis Channel was a theory when they
17 signed up and said, "Hey, this might be a good
18 idea." And since they have seen it grow, they
19 have entertained conversations with us, and we
20 are hopeful that they are going to follow suit
21 with the other networks who have already
22 migrated us to broader distribution.

1 Q Now, and as for recent deals,
2 where have you -- what level of distribution
3 have you achieved?

4 A In the last few years, we haven't
5 been asked to do -- well, let's put it this
6 way. We haven't been forced to do any deals
7 that give us narrow distribution or sports
8 tier only distribution. Every deal in quite
9 the last few years has been -- that we have
10 had control over, I should say, has been for
11 broader than sports tier distribution, some
12 form of general entertainment tier that gives
13 us broad distribution.

14 Q Now, you approached Comcast in
15 2006 and 2007 and made an offer pursuant to an
16 MFN clause to them for broader distribution,
17 is that right, sir? I want to refer you to
18 that for a moment.

19 A Yes, we did.

20 Q And what did Comcast tell you at
21 that time?

22 A Well, I believe that --

1 MR. CARROLL: Your Honor, just a
2 note. This is not in this witness' direct
3 testimony. It was omitted from his direct
4 testimony. I'm going to let it go, but I just
5 want to note this is not covered in any of the
6 direct testimony offered. But I'll let it go.

7 JUDGE SIPPEL: Go ahead.

8 THE WITNESS: I can't recall the
9 specific conversations, but I think in both
10 cases Comcast elected to not -- you know, they
11 were shown the success that we had at those --
12 each of those times, and we were obligated and
13 happy, pursuant upon our obligations through
14 the MFN, to offer them expanded distribution,
15 and they chose not to take us up on it.

16 BY MR. PHILLIPS:

17 Q Well, after you were turned down
18 by them that second time, what did you do to
19 address distribution concerns?

20 A Well, I think that what we did was
21 focus our efforts, both before and after that
22 time, on building the best service possible.

1 I have been in the business for a long time,
2 as we discussed. And it was my opinion that
3 the most important thing we could do was make
4 a service that was not only as good, but
5 frankly, because we weren't owned by them or
6 any other distributor, better.

7 That if we could make something
8 that was clearly better in terms of -- as
9 good, if not better, and we felt we had to be
10 better in terms of value, that it would make
11 it irresistible for them to give us the
12 broader distribution that we sought.

13 So we set about to do a number of
14 things. The first thing was to ask for more
15 money from our investors, a lot of it, to
16 invest first and foremost in rights. And we
17 went from -- the initial concept of Tennis
18 Channel was only 20 secondary tournaments to
19 today where we have substantively every top
20 hundred tournament in the world, most of which
21 we have exclusively, and the majors, which we
22 happily share with some partners.

1 We also invested in contracts with
2 the most famous and well-known announcers and
3 former players and legends of the business,
4 like Jimmy Connors, John McEnroe, Martina
5 Navratilova, and they are wonderful and don't
6 come cheap. But we felt that it was really
7 important to put the best editorial face next
8 to the content to make the best product
9 possible.

10 We did other things that you do in
11 our business. One was to get out in front of
12 high definition. Even though we were a
13 smaller and evolving network, we spent many,
14 many millions of dollars building a stand-
15 alone television studio just so that we could
16 facilitate a 24-hour, seven-day-a-week, high
17 definition signal, which is a completely
18 separate second channel that mirrors the first
19 channel, but for a variety of reasons I don't
20 need to go into requires a lot of investment,
21 time, effort, and money to do.

22 And we did a lot of other things,

1 but what was most important is we did them all
2 without ever passing those costs on to the
3 distributor. We felt if we could make a
4 package that was that valuable for both our
5 distribution partners like Comcast, as well as
6 for their consumers, that eventually we would
7 earn our way, which is what we really wanted
8 to do, into the kind of broader distribution
9 that they afforded their own networks.

10 Q Well, Mr. Solomon, I going to be
11 very specific about it. Since July 2007, what
12 grand slam tournaments have you added to The
13 Tennis Channel?

14 A Well, July 2007 we would have just
15 completed our very first French Open. Since
16 then, in 2008, we added the rights to the
17 French Open. We had our first Australian Open
18 in January of 2008. We added the rights to
19 the U.S. Open in late 2008 for the first
20 telecast of 2009. We added a lot of
21 personalities like Jimmy Connors, who was
22 really tough to get, and Lindsay Davenport.

1 We have kept and renewed our existing talent,
2 all of whom it's not so easy to hold onto.

3 We took the U.S. Davis Cup rights,
4 which we used to share with Versus, we took
5 100 percent control of those, as well as the
6 international Davis Cup rights and the Fed Cup
7 rights.

8 We took the Men's and Women's
9 Finals, which happened in the fourth quarter
10 at the end of the year, those are the tour
11 finals of the ATP and the WTA, which are the
12 men's tour and the women's tour, and a lot of
13 other things, you know, along the way, as an
14 investment.

15 Q You said you used to share the
16 Davis Cup with Versus until 2008. What do you
17 mean by that?

18 A Well, the Davis Cup, which is the
19 international sort of Olympics of tennis,
20 where teams compete by country, there are
21 really two packages. There is the
22 international package, which is all of the

1 other, and then there is the U.S. package.

2 We used to share the U.S. package
3 with Versus for domestic production and
4 distribution. And we had to, because the
5 purveyor of those rights, who is the USTA and
6 the ITF, who is the International Tennis
7 Federation, and the United States Tennis
8 Association, felt that we needed broader
9 distribution and to be stronger.

10 When we got strong enough, they
11 gave us the right exclusively to telecast the
12 U.S. Open. I think they were pleased to have
13 us as a telecaster, because it was our
14 expertise in broadcasting tennis, whereas it
15 wasn't necessarily at that time a core
16 competency for Versus.

17 Q I would like to ask you --

18 JUDGE SIPPEL: What year was that?

19 THE WITNESS: I believe that we
20 took the rights in -- after the -- it would
21 have been for 2008, I believe. So after the
22 2007 finals where the U.S. actually won, and